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# Insurance - Action Against Liability Insured By Named Insured

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stances surrounding the prior contract to sell machinery, there seems to have been a collateral unwritten agreement to let the plaintiff retain the machinery not specifically mentioned in the contract to sell, transferring the remaining machinery with the property. If this was not their understanding the prior contract to sell the machinery would have been unnecessary, since all of the machinery would have been transferred by the notarial act of sale.[14] Further, the very fact that the prior contract was formed shows that the parties did not intend to integrate their complete agreement in the notarial act of sale.

The parties apparently intended that their agreement be contained both in the notarial act and in the prior contract to sell the machinery, which was collateral to the notarial act, and which gave rise to the unwritten agreement alleged by the plaintiff. It is submitted, therefore, that the parol evidence should have been admitted to determine if these were their actual intentions. If they did intend to integrate their agreements, parol evidence should not be allowed to vary the terms of the written act; if they did not so intend, effect should have been given to the collateral agreements revealed by the parol evidence.

*William J. Doran, Jr.*

INSURANCE—ACTION AGAINST LIABILITY INSURER BY NAMED INSURED

Plaintiff brought suit against his liability insurance carrier for damages resulting from injuries he suffered when his car, in which he was a passenger, was involved in an accident while his wife was driving. Circumstances of the accident clearly established the negligence of the wife. *Held*, the provisions of the policy authorized recovery by the named insured against his insurer. *McDowell v. National Surety Corp.*, 68 So.2d 189 (La. App. 1953).

The courts have previously held that under the Louisiana Direct Action Statute[1] only general defenses of the insured can be urged by the insurer. Thus, a party can recover from a spouse's liability insurer even though the defense of coverture, a personal

14. Art. 468, LA. CIVIL CODE of 1870.

1. LA. R.S. § 22:655 (1950). For a general discussion of this statute, see Comment, 13 LOUISIANA LAW REVIEW 495 (1953).

defense, would prevent a successful action from being brought against the negligent spouse.[2]

The wife was unquestionably the "insured" when the accident occurred. Under the omnibus clause of the plaintiff's liability insurance policy, the "insured" was defined as: ". . . the named insured and also . . . any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or with his permission."[3]

The sole question before the court was whether the terms of the policy manifested an intention that the carrier's liability through an additional insured included liability even to the named insured. Under the coverage clause the insurer agreed "to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by *any person*, caused by accident and arising out of ownership, maintenance or use of the automobile."[4] Nowhere in the policy was the term "any person" limited to suggest that the named insured did not come within the coverage of the policy. The court came to the same conclusion, using the following language: "Certainly had the insurer desired to relieve itself of liability for personal injuries to the named insured, it could have easily done so by inserting appropriate language to that effect into the policy."[5]

The policy in question was made to conform to the National Standard Basic Automobile Liability Policy,[6] which reflects, in its recent changes, a definite intention on the part of the insurers' organization to extend coverage to the named insured. On the basis of the wording of the standard policy in force prior to 1936,

2. Edwards v. Royal Indemnity Co., 182 La. 171, 161 So. 191 (1935); Scarborough v. St. Paul Mercury Indemnity Co., 11 So.2d 52 (La. App. 1942). Harvey v. New Amsterdam Casualty Co., 6 So.2d 774 (La. App. 1942), where the court held that the insurer, by agreeing "To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages" (*id.* at 775) had shown an intent to pay not only enforceable claims against the insured, but also claims for which a *cause* of action existed, but which could not be enforced because no *right* of action existed.

3. McDowell v. National Surety Corp., 68 So.2d 189, 195 (La. App. 1953).

4. *Ibid.*

5. *Ibid.*

6. Standard Basic Automobile Liability Policies as approved by the Casualty and Surety Division of the Louisiana Insurance Rating Commission, and the Insurance Department of the Office of the Secretary of State (1947 policy).

recovery by the named insured had been permitted.[7] In that year, the national standard policy was revised so that the named insured was explicitly barred from bringing such a suit.[8] However, in 1947 the standard policy was again revised,[9] and the clauses which had barred action by the named insured were omitted. There is no indication in the text of the opinion that this history was before the court when it reached its decision.

Although the insurer in this suit may have had no knowledge of this history, he is required by Louisiana law to extend the full coverage of the standard policy.[10] Since these changes indicate a definite intention that the standard policy permit recovery by the named insured, the decision, though based exclusively on the wording of the policy, is manifestly correct.

*Robert J. Jones*

### LOUISIANA PRACTICE—EFFECT OF APPLICATION FOR SUPERVISORY WRITS ON TRIAL COURT PROCEEDINGS

Defendant's exception of *lis pendens* was overruled by the trial court. Defendant then notified the trial judge that she intended to apply to the Supreme Court for a review of the ruling under its supervisory jurisdiction. Subsequently, default judgment was rendered in favor of the plaintiff. Defendant's motion to vacate the judgment was denied and she made appli-

7. Farmer v. United States Fidelity & Guaranty Co., 11 F. Supp. 542 (M.D. Ala. 1935); Howe v. Howe, 87 N.H. 338, 179 Atl. 362 (1935); Archer v. General Casualty Co. of Wisconsin, 219 Wis. 100, 261 N.W. 9 (1935).

8. 1 INSURANCE POLICY ANNOTATIONS, SECTION OF INSURANCE LAW OF AMERICAN BAR ASSOCIATION 29 (Supp. 1945):

"(b) INJURY TO OR DEATH OF . . . . NAMED INSURED

"The insurance with respect to any person or organization other than the named insured does not apply: (a) to injury to or death of any person who is a named insured."

APPLEMAN, AUTOMOBILE LIABILITY INSURANCE 106 (1938):

"DEFINITION OF INSURED

"The unqualified word 'insured' wherever used . . . includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is 'pleasure and business' or 'commercial,' each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply:

". . .

"(b) to any person or organization with respect to bodily injury to or death of any person who is a named insured."

9. Note 6 *supra*.

10. LA. R.S. § 22:623 (1950).